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**From:** Amato, Paul [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=13B29B5DF12F425E833B66385FDA9969-PAMATO]  
**Sent:** 7/15/2014 9:55:24 PM  
**To:** Aaron Allen [aaron.o.allen@usace.army.mil]; Markham, John W SPL [John.W.Markham@usace.army.mil]; McGuffie, Brianne E SPL [Brianne.E.McGuffie@usace.army.mil]; daniel.p.swenson@usace.army.mil  
**Subject:** RE: Soquel Canyon

Dave's experience appears to be that the Corps has issued the permits before approving the bank. I can't recall how this has played out but looking at 332.8(k) it appears that the intent is to make sure the permit reflects relevant provisions of the final instrument. The language says that the permit should come after relevant provisions of the mitigation plan have been "substantively determined" which isn't necessarily the same as being signed but again, that seems to be the intent. Curious how you interpret this.

*(k) Coordination of mitigation banking instruments and DA permit issuance.* In cases where initial establishment of the mitigation bank, or the development of a new project site under an umbrella banking instrument, involves activities requiring DA authorization, the permit should not be issued until all relevant provisions of the mitigation plan have been substantively determined. This is to ensure that the DA permit accurately reflects all relevant provisions of the final instrument, such as performance standards.

Paul F. Amato  
Environmental Protection Specialist  
Wetlands Regulatory Office  
U.S. EPA, Region 9  
75 Hawthorne Street, WTR-8  
San Francisco, CA 94105-3901  
t:(415) 972-3847  
f:(415) 947-8026  
e:amato.paul@epa.gov

**From:** Nate Bello [mailto:bello@wra-ca.com]  
**Sent:** Tuesday, July 15, 2014 1:55 PM  
**To:** David Lawhead; Aaron Allen; Amato, Paul; Markham, John W SPL; McGuffie, Brianne E SPL; daniel.p.swenson@usace.army.mil; Zimmerman, Jan@Waterboards; Julie Vandermost; Tim DeGraff; Shawn Gatchel-Hernandez  
**Subject:** Fwd: Soquel Canyon

Hi Dave,

Sorry we missed talking with you on the call today. We discussed during the IRT meeting that we are planning on preparing the permits for the Petersen Ranch Mitigation Bank concurrently with the BEI, based on the

earlier emails that you and I exchanged. The EPA and Corps indicated they would like to have internal discussions about this, so I am forwarding our previous emails to provide the background of our discussion.

Regards,

Nate

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**NATHAN BELLO** | Conservation Biologist/Planner | o: 415.454.8868 x 180 | c: 916.508.4993 | [bello@wra-ca.com](mailto:bello@wra-ca.com)

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----- Forwarded message -----

From: **Lawhead, David@Wildlife** <[David.Lawhead@wildlife.ca.gov](mailto:David.Lawhead@wildlife.ca.gov)>

Date: Mon, Jul 14, 2014 at 9:14 AM

Subject: RE: Soquel Canyon

To: Nate Bello <[bello@wra-ca.com](mailto:bello@wra-ca.com)>

Nate,

While the language in some sections of the BEI may be interpreted to allow for that option, the Department is currently not signing BEIs until all of the other signatory agencies are in agreement on the BEI, and all necessary permits are obtained. The Department will acknowledge that the BEI is "acceptable" before all permits and CEQA are completed, but not sign the BEI. We do not wish to revisit the BEI if other permitting agencies end up making changes to the project, especially since they could affect credits available in the bank. We don't want to end up with a situation where some credits that were assumed to be assigned to the bank (including in the first 15% of credits released upon BEI signature) are removed from the bank after they have already been sold. Also, my experience working with the Army Corps is that they will not sign the BEI until after they issue the 404 permit, which is dependent upon the issuance of the 401 certification from the RWCQB, which in turn is dependent upon the completion of the required CEQA document. So, in practical terms the BEI would not be in effect until all signatory agencies have signed, which isn't going to happen until all of the permits and CEQA are completed. Hope that clarifies things.

Dave

**From:** Nate Bello [<mailto:bello@wra-ca.com>]

**Sent:** Thursday, July 10, 2014 6:54 PM

**To:** Lawhead, David@Wildlife

**Cc:** Tracey Brownfield; Julie Vandermost; Shawn Gatchel-Hernandez; Tim DeGraff

**Subject:** Soquel Canyon

Hi Dave,

Thanks for the call the other day. Per your request, attached is a copy of the matrix of the corps comments and our responses. We met with the corps to go over these in detail.

Also, you mentioned that you thought the Bank would have to have any and all permits issued prior to CDFW signing the Bank Agreement. We have talked about this interpretation and would like to discuss this further with you, as it is our opinion that this may not be the case. The BEI Template includes language in two sections that discuss permits, the first says the Bank Sponsor will obtain all permits (future tense), and the other outlines the process for modifying the Development Plan, should changes be needed in order to comply with the permits needed to establish the Bank. Also, we haven't seen anything in the checklists, or the Corps or CDFWs banking policies that require permits be completed/included in the package prior to signing.

The sections from the template are included below:

*IV.D:*

*The Bank Sponsor will obtain all appropriate permits and other authorizations needed to construct and maintain the Bank. This BEI does not constitute or substitute for any such approval.*

*IV.G*

*In the event that after the BEI is signed by the Parties, the Bank Sponsor and the Signatory Agencies, in coordination with other members of the IRT, determine that modifications must be made in the Development Plan to ensure successful establishment, restoration, and enhancement of Waters of the U.S., Waters of the State, and Covered Habitat within the Bank, or in order to comply with specific permits or other authorizations needed to establish the Bank, the Parties shall meet to discuss the required modifications, and the Bank Sponsor shall submit a written request for approval of such modifications to the Signatory Agencies within 60 days of the meeting.*

Based on the above, it appears to us that it is intended that permits would be obtained in the future. This makes sense particularly since some banks are construct in phases over several years, and the banking templates allow for sales of credit to occur (from the first release) before construction is initiated, also, Preservation/enhancement credits are generated without conducting a permitted activity.

Regards,

Nate

**NATHAN BELLO** | Conservation Biologist/Planner | o: [415.454.8868](tel:415.454.8868) x 180 | c: [916.508.4993](tel:916.508.4993) | [bello@wra-ca.com](mailto:bello@wra-ca.com)

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